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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,768	12/12/2000	Gary D. Greer	3251.2US	6802

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EXAMINER	
LANGEL, WAYNE A	

ART UNIT	PAPER NUMBER
1754	6

DATE MAILED: 01/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

A8-6

Office Action Summary

Application No.	Applicant(s)
735768	Greer et al
Examiner	**Group Art Unit**
Laugel	1754

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-16 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-16 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____.

Attachment(s)

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4+5

☐ Interview Summary, PTO-413

☒ Notice of References Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ 2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 5,984,992. Although the conflicting claims are not identical, they are not patentably distinct from each other because the fertilizer recited in instant claims 1-13 would inherently be produced by the method recited in claims 1-12 of Patent 5,984,992.

Claims 14-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 5,984,992. Although the conflicting claims are not identical, they are not patentably distinct from each other because instant claims 14-16 are broader than claims 1-12 of Patent 5,984,992.

Claims 3-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point

out and distinctly claim the subject matter which applicant regards as the invention. In claims 4 and 13, it is indefinite as to what would constitute a "conventional granular fertilizer". In claims 3 and 12, it is indefinite as to what would constitute "standard granular fertilizer application equipment". In claim 5, it is indefinite as to what would constitute a "low pH". In claims 6 and 9, "low" is a relative term and therefore indefinite. In claims 14-16, it is indefinite as to whether the entire process is being claimed, or only the "improvement" thereof, since the claims literally recite an "improvement" in a process, however the conventional Jepson format calls for the admittedly known process to be positively recited in the preamble, with the "improvement" recited after the preamble.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

> matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wilson. Wilson discloses a process for granulating and upgrading relatively low analysis, dusty, organic waste fertilizer material, such as dried animal manure or sewage sludge, by admixing the same with controlled amounts of an acid, such as sulfuric or phosphoric acid or mixtures thereof, and an aqueous ammoniacal solution, such as aqueous ammonia or ammoniacal nitrogen salt-containing solutions, and tumbling the resulting reaction mass to effect the formation of uniformly shaped, well-defined granules of fertilizer. The acid and aqueous ammoniacal solution preferably are added and mixed with the organic waste material simultaneously, and employed in amounts sufficient to ensure the formation of a granular product. (See the paragraph bridging columns 1 and 2 of Wilson.) There is no evidence of record showing that the granular fertilizer recited in applicant's claims 1-13 would be any different from that formed by the process disclosed by Wilson. Although the fertilizer recited in claims 7, 8 and 10 would probably contain iron or zinc, Wilson discloses at column 3, lines 51-60 that the

fertilizer may contain supplemental inorganic ingredients such as iron or zinc.

Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of the PIPE-CROSS REACTOR TECHNICAL UPDATE ARTICLE. Wilson is relied upon as discussed hereinbefore. The difference between the process disclosed by Wilson, and that recited in claims 14-16, is that Wilson does not disclose that the process should be carried out in a Pipe-Cross Reactor. The PIPE-CROSS REACTOR TECHNICAL UPDATE ARTICLE discloses the advantages and disadvantages of a PCR in order to produce fertilizer. (See page 1, column 1, lines 3-4.) The PCR allows for two acids to be ammoniated simultaneously and that a preneutralizer is not required to partially neutralize the acids before their introduction to the reactor. (See page 1, column 2, lines 25-39.) The reactor consists of tubes to which sulfuric and phosphoric acids are added through tube cross pipes, and ammonia is added via a third tube (column 3, lines 1-8). It would be obvious from the PIPE-CROSS REACTOR TECHNICAL UPDATE ARTICLE to carry out the process of Wilson in a PCR, since the article establishes the conventionality of adding streams of acids and ammonia during the production of fertilizer to result in a simple and economical process.

Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Salladay et al. Wilson is

relied upon as discussed hereinbefore. The difference between the process disclosed by Wilson, and that recited in claims 14-16, is that Wilson does not disclose that the process should be carried out in a Pipe-Cross Reactor. Salladay et al. disclose a process for the improvement in the production of fertilizers from phosphoric acid, sulfuric acid and ammonia using a PCR (column 1, lines 16-18). It would be obvious from Salladay et al. to carry out the process of Wilson in a Pipe-Cross Reactor, since Salladay et al. establish that it is well-known in the art to use a PCR to add streams of acid and ammonia during the production of fertilizer granules so as to provide a simple, economical and very easy to operate process for producing fertilizer granules.

Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,159,263. Although the conflicting claims are not identical, they are not patentably distinct from each other because the fertilizer granules recited in claims 1-13 would inherently be produced by the process recited in claims 1-8 of Patent 6,159,263.

Claims 14-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,159,263. Although the conflicting claims are not identical, they are not

patentably distinct from each other because the instant claims are broader than the process recited in claims 1-8 of Patent 6,159,263.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne A. Langel whose telephone number is (703) 308-0248. The examiner can normally be reached on Monday through Friday from 8 A.M. to 3:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin, can be reached on (703) 308-1164. The fax phone number for this Group is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2351.

WAL:cdc
January 23, 2002

Wayne A. Langel
Wayne A. Langel
Primary Examiner
GAU 1754